Petition

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81-1379

IN THE

Supreme Court of the United States

October Term, 1981

No. _____

CEAT S.p.A, Pneumatici

Petitioner,

v.

DALTON BRYANT

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE ALABAMA SUPREME COURT

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QUESTIONS PRESENTED

1. Whether the decision of the Supreme Court of Alabama denied petitioner due process of law by allowing Alabama to exercise *in personam* jurisdiction over petitioner, an Italian corporation which had severed all contacts with the forum state five years prior to initial service of process upon it.

2. Whether the Alabama Supreme Court may require a foreign corporation which has no contacts with Alabama to place resale restrictions that violate Section 1 of the Sherman Anti-Trust Act, 15 U.S.C. § 1, upon the products it sells in other states to avoid the burden of defending a products liability action in Alabama.

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Petitioner,

v.

DALTON BRYANT

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE ALABAMA SUPREME COURT

The petitioner Ceat, S.p.A, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Alabama Supreme Court entered in this proceeding on October 2, 1981.

I. OPINION BELOW

The opinion of the Supreme Court of Alabama, not yet reported, appears in Appendix A hereto. Petitioner's application for rehearing was overruled without opinion.

II. JURISDICTION

The judgment of the Supreme Court of Alabama was entered on October 2, 1981. A timely petition for rehearing was denied on November 6, 1981, and this petition for certiorari was filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

III. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

This case involves section 1, fourteenth amendment, United States Constitution and the Sherman Anti-Trust Act, 15 U.S.C. § 1.

IV. STATEMENT OF THE CASE

The petitioner in this proceeding, a defendant below, is Ceat S.p.A. Pneumatici (hereinafter "Ceat"), a tire manufacturing company incorporated in Turin, Italy. Respondent filed suit in June 1977 against numerous defendants for personal injuries sustained when a truck tire manufactured by Ceat in 1974 exploded on July 6, 1976. Ceat was added as a party defendant by amendment on May 1, 1978. On July 13, 1979, petitioner filed a motion for summary judgment on the ground that the Circuit Court of Morgan County, Alabama, has no jurisdiction over it. The motion was heard and overruled twice and then granted on December 2, 1980 on the basis of this Court's decision in *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286 (1980).[1]

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[1] The learned trial judge, in correcting his former holding and dismissing Ceat S.p.A. as a party defendant, reasoned that:

> "Foreseeability," that the product may wind up within the jurisdiction of a state court is only one of the items to be examined in determining jurisdiction, and this most recent case seems to make it one of the minor elements which fixes jurisdiction. This view is certainly a sounder interpretation of the Constitution than the view which is based on foreseeability alone.
>
> The legal fraternity motivated by diligence is prone to over interpret decisions of the higher courts at times. Perhaps this is the interpretation placed on International Shoe Company vs Washington, Supra, but, it seems that World-Wide Volkswagen v. Woodson clarifies this issue. In the opinion of this Court, we have only the test of foreseeability on which to base personal jurisdiction of this defendant. (A-13)

The trial judge entered an order under Rule 54(b) of the Alabama Rules of Civil Procedure declaring this judgment final and immediately reviewable by the Supreme Court of Alabama. In a 6-3 decision, the Alabama Supreme Court held that Ceat's contacts with Alabama are sufficient to subject it to *in personam* jurisdiction. The contacts they found were two shipments of tires to David Tire Company in Birmingham, Alabama, in 1972 and 1973.[2]

The record contains no evidence of any contacts by Ceat with Alabama after 1973.[3] However, the Alabama Supreme Court determined that Ceat *"by selling its tires to wholesalers without restrictions,* . . . 'deliver[ed] its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state.' " (A-5) (emphasis theirs). It thus held that to avoid suit in Alabama any foreign corporation is required to place territorial restraints upon the resale of its products sold in the United States. Such a territorial restraint upon resale was held by this Court to be a *per se* violation of Section 1 of the Sherman Anti-Trust Act, 15 U.S.C. § 1, in *United States v. Arnold, Schwinn & Co.*, 388 U.S. 365 (1967).

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[2] The tire in question was manufactured in April 1974, invoiced to Duddy's, a wholesaler in Massachusetts, in 1974 and exploded in Alabama on July 2, 1976.

[3] The dissent is eminently correct in its statement that the majority opinion is in error for two reasons: "First, the record contains no evidence whatsoever of Ceat's *present* contacts with the United States, this region, or this state. Second, the contacts of Ceat with this state via an independent contractor, Duddy's, over eight years ago are insufficient to justify exercising jurisdiction over Ceat." (A-6) (emphasis in original).

V. REASONS FOR GRANTING THE WRIT

1. THE DECISION OF THE ALABAMA SUPREME COURT CONFLICTS WITH THE DUE PROCESS RESTRICTIONS UPON *IN PERSONAM* JURISDICTION AS RECENTLY CLARIFIED BY THIS COURT IN *WORLD-WIDE VOLKSWAGEN CORP. V. WOODSON,* 444 U.S. 286 (1980).

The plain language of the *World-Wide Volkswagen* decision clearly mandates that, in order to satisfy the dual test for *in personam* jurisdiction of "reasonableness" and "fairness," the manufacturer must have committed affirmative acts of such a quality that he is, or should be, put on notice that he might be "haled into court" in a particular jurisdiction. The mere foreseeability that a product might find its way into the forum state is insufficient. Defendants must be given sufficient notice to permit them to structure their conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.[4]

In the instant case, the only contacts by Ceat with Alabama that may be construed to be a purposeful "availing itself of the privilege of conducting activities within the forum state"[5] consisted of two invoices for tires shipped to David Tire Company in Birmingham, Alabama, in 1972 and 1973. Thereafter all activity ceased. If Ceat established "minimum contacts" by two invoices of its tires to Birmingham, it effectively severed these contacts in 1974 when it ceased to market tires in Alabama.[6]

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[4] *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286 (1980).

[5] *Hanson v. Denckla,* 357 U.S. 235, at 254 (1958).

[6] Once a corporation ceases doing business in a state, the jurisdiction of that state ceases to exist. *Chapman v. Thomas B. Jeffrey Co.,* 251 U.S. 373 (1920).

In 1978, some five years later, Ceat was served with a summons and complaint filed in the Circuit Court of Morgan County, Alabama, which charged negligence in the manufacture of a tire. The tire in question was manufactured in the 14th week of 1974, after which it was sold and shipped from Italy to a distributor in Massachusetts. It exploded two years later.

The further reasoning of the Alabama Supreme Court that merely because the tire was sold in Alabama by Priceville Tire Company, jurisdiction must exist, is incorrect. There is no record of any attempt by either Ceat or Duddy's to deal with Priceville Tire Company. The record is silent as to how this tire entered the inventory of Priceville Tire. Priceville Tire could reasonably have bought it at a fire sale, or a going-out-of-business sale from a dealer in one of the states served by Ceat and Duddy's. It is even possible that the tires were hijacked and black marketed in Alabama. Respondent has failed to carry the burden of proving that the presence of the tire at Priceville Tire Company had any connection whatsoever with any activity by Ceat.

The Supreme Court of Alabama extended itself beyond the limits of credibility to find *in personam* jurisdiction in this case. The petitioner has never had an office or resident agent in Alabama.[7] Indeed, Ceat does not have

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[7] CEAT has no contracts formed within the State of Alabama, or to be performed within the State of Alabama, has no agents in Alabama, no salesmen, deliveries or stocks of merchandise in Alabama, maintains no places of business and makes no sales in Alabama. In summary, CEAT S.p.A. has no contacts or activities whatsoever within the State of Alabama. (A-10)

an office in the United States.[8] The summons and complaint were not served until five years after Ceat's last act in Alabama, the isolated delivery of two unrelated shipments of tires to a non-party, tires that are not involved in the case. Ceat unconditionally sold the tire involved in this case to a distributor in Massachusetts five years before service of the summons and complaint. There is no evidence of any pattern, practice or concerted effort by Ceat to serve the Alabama market either at the time the tire involved in this case exploded or at the time process was served upon Ceat. Nevertheless the Supreme Court of Alabama extended the jurisdiction of the state over Ceat, your petitioner.

2. THE OPINION OF THE ALABAMA SUPREME COURT REQUIRES FOREIGN CORPORATIONS HAVING NO CONTACTS WITH ALABAMA TO SUBJECT THEMSELVES TO ITS JURISDICTION OR COMMIT INTENTIONAL *PER SE* VIOLATIONS OF SECTION 1 OF THE SHERMAN ANTI-TRUST ACT WHEN THEY SELL GOODS IN OTHER STATES.

Unable to find sufficient affirmative acts of Ceat to fairly satisfy the test laid down by this Court in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), the Supreme Court of Alabama espoused a new test for the existence of *in personam* jurisdiction. Applying this new test the Supreme Court of Alabama held that

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[8] Ceat Representative Office, Inc., not a party to this action, now has four personnel located in two offices: New York, New York and Akron, Ohio. However, business conducted in the forum by a subsidiary will not support *in personam* jurisdiction over the parent foreign corporation. *Cannon Manufacturing Co. v. Cudahy Packing Co.*, 267 U.S. 333 (1925) (Brandeis, J.).

"by selling its tires to wholesalers without restrictions, . . . Ceat 'deliver[ed] its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state.' " (A-5) (emphasis theirs). It held that by failing to place vertical territorial restraints upon the resale of the tires it sold in Massachusetts, Ceat had subjected itself to *in personam* jurisdiction in Alabama.

When a manufacturer, such as Ceat, sells its products to a distributor subject to the type of territorial or customer restrictions upon resale described by the Alabama Supreme Court it commits a *per se* violation of Section 1 of the Sherman Anti-Trust Act 15, U.S.C. § 1. This Court ruled upon such restrictions in *United States v. Arnold, Schwinn & Co.*, 388 U.S. 365 (1967), where it held that a *per se* violation results when a manufacturer seeks to restrict the areas in which, or the persons to whom, its product may be resold after the manufacturer had parted with title, dominion and risk with respect to that product.[9] Thus the test propounded by the Supreme Court of Alabama presents petitioner and similar corporations with the choice of submitting to suit in states with which they have no minimum contacts or intentionally violating the Sherman Anti-Trust Act.

Consistently applied, this test would subject every corporation legally selling a product in the United States to the jurisdiction of the State of Alabama. In the landmark case of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) this Court emphasized that a forum state may not

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[9] Once the manufacturer has parted with title and risk, he has parted with dominion over the product, and his effort thereafter to restrict territory or persons to whom the product may be transferred — whether by explicit agreement or by silent combination or understanding with his vendee — is a per se violation of § 1 of the Sherman Act.
388 U.S. at 382.

exercise *in personam* jurisdiction if doing so would offend "traditional notions of fair play and substantial justice."[10] The invidious test announced by the Supreme Court of Alabama, presenting corporations with the choice of violation of federal criminal law or submitting to Alabama jurisdiction because of a sale in another state, violates all notions of fair play and substantial justice.

VI. CONCLUSION

For the aforesaid reasons this petition should be granted.

Respectfully submitted,

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[10] 326 U.S. at 316 'quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940).

Appendix

APPENDIX A

THE STATE OF ALABAMA — JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL TERM — 1981

Dalton Bryant

80-234

v.

Ralph C. Speegle, et al.

Appeal from Morgan Circuit Court

BEATTY, JUSTICE.

Plaintiff, Dalton Bryant, appeals from the order of the Circuit Court for Morgan County which granted the motion of defendant, Ceat S.p.A., an Italian corporation, for summary judgment on grounds that the contacts of the corporation with this state are insufficient to support *in personam* jurisdiction[1] under our long-arm statute, Rule 4.2, ARCP. We reverse and remand.

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[1] We do not address the propriety of granting a motion for summary judgment, Rule 56, ARCP, as compared to a Rule 12(b)(2), ARCP, motion to dismiss for lack of jurisdiction over the person.

On July 12, 1976, Ralph Speegle took his truck to plaintiff Bryant's welding shop to have it repaired. While Bryant was evaluating the repairs needed, he laid a clipboard on the tire. The tire exploded, severely injuring Bryant. The evidence indicates that the tire was recapped at least twice before the explosion. Bryant filed suit seeking damages against Speegle and numerous parties, including Ceat S.p.A. (Ceat), the Italian manufacturer of the tire.

The only issue on this appeal is whether *in personam* jurisdiction over Ceat may be asserted consistently with the Due Process Clause of the Fourteenth Amendment. Alabama's long-arm statute is codified in Alabama Rule of Civil Procedure 4.2. That statute for substituted service has been found to extend to the permissible limits of due process. *Sells v. International Harvester Co., Inc.*, 513 F. 2d 762 (5th Cir. 1975); *Semo Aviation, Inc. v. Southeastern Airways Corp.*, Ala. 360 So. 2d 925 (1978).

The Supreme Court of the United States recently reaffirmed the principle that a forum state may exercise *in personam* jurisdiction over a nonresident defendant so long as there are such minimum contacts that the suit does not offend "traditional notions of fair play and substantial justice." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980) (quoting *International Shoe Co. v. Washington*, 326 U.S. 306, 316 (1945)). Whether sufficient contacts exist so that the maintenance of a suit in Alabama does not offend reasonableness and fair play is to be determined on a case by case basis. *Perkins v. Benquet Consolidated Mining Co.*, 342 U.S. 437 (1952). The facts of the present case support our finding that Ceat's contacts are sufficient to subject it to *in personam* jurisdiction in Alabama.

Although Ceat has no offices, employees or property in the United States, its wholly owned subsidiary, Ceat Representative Office, Inc. (Ceat Representative) has offices in New York and Ohio. The four employees of Ceat Representative solicit sales to wholesalers in the United States of tires manufactured under Ceat's own brand name. The tires are sent directly from Italy to the wholesalers.

Three corporations in the United States have private brand contracts with Ceat. One is located in Massachusetts, one in New York, and the other in California. These corporations deal directly with representatives of Ceat in Italy, not with Ceat Representative.

In 1974 Ceat, pursuant to its contract with the Massachusetts corporation, Duddy's, Inc., manufactured the tire in question along with others of the same type. The brand name of the tire is "Tyrino," indicated the tire was produced exclusively for sale by Duffy's (sic), Inc. The shipment records for that specific type tire to Duddy's in 1974 show that 1,224 tires were destined for distribution by Duddy's to thirteen different locations in nine different states. Although Ceat denies any knowledge of the subsequent movement of those tires, John H. Porosky, a vice president of Ceat Representative, testified that he knew Duddy's was a nation-wide concern with tire sales of twenty million dollars per year. In 1973, Ceat sold over 5,000 "Tyrino" tires to Duddy's for distribution in the United States, and in 1974 over 2,000.

The most important fact in this case and the one which clearly establishes Ceat's contacts with this state is that Ceat's sales records show that in 1972 invoices for 4,300 tires were sent to David Tire Company in Birmingham, Alabama, presumably on order from Duddy's. In 1973, an additional 9,284 tires were invoiced to David Tire Company. Ralph Speegle, in 1974, purchased the tire in question in Priceville, Alabama.

Despite facts indicating to the contrary, Ceat claims that it was not "foreseeable" that it would be subject to suit in Alabama. Ceat relies upon the recent clarification by the Supreme Court of the United States on the degree of foreseeability necessary to determine whether the exercise of *in personam* jurisdiction by a state is permissible. In *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), the Court stated that in order to find the foreseeability element of due process the defendant's conduct within the state must be such that he "reasonably anticipates being haled into court there." *Id.* at 297. A

comparison of the facts in *World-Wide Volkswagen* with those in the instant case will illustrate that Ceat's conduct met the foreseeability criterion of due process.

In *World-Wide Volkswagen,* New York residents who had purchased an automobile from a New York retailer were injured in Oklahoma while driving to a new home. The Court held that due process would not permit Oklahoma to assert jurisdiction over the New York retailer of the automobile or New York wholesaler who sold to retailers in New York, Connecticut and New Jersey. The Court pointed out that the "foreseeability" element of due process was lacking. There was no evidence of record that any automobile distributed by World-Wide was sold to retail customers outside the tri-state area. In other words, there was no evidence of a sale to a retailer in Oklahoma, the state where the injury occurred.

The facts in the instant case differ materially from those in *World-Wide Volkswagen.* Besides the injury which occurred in Alabama to an Alabama resident, this case has sales of Ceat's tires made by a wholesaler to an *Alabama* retailer. An *Alabama consumer* purchased the tire in question in Alabama. Thus, Ceat established "contacts" with this state and should have been able to reasonably anticipate being haled into court here.

The plaintiffs in *World-Wide Volkswagen* had also sued the German manufacturer of the automobile, Audi, which never contested jurisdiction. Nonetheless, through *dictum,* the Court imposed jurisdiction upon the German manufacturer when it stated:

> Hence if the sale of a product of a *manufacturer or distributor* such as Audi or Volkswagen is not simply an isolated occurrence, but *arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other states, it is not unreasonable to subject it to suit in one of those states* if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum state does not exceed its powers under the due process

> clause if it asserts personal jurisdiction over a corporation *that delivers it products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state.* [Emphasis added.] [444 U.S. at 297-298.]

The facts of the present case fall within the above *dictum* which clearly recognizes that jurisdiction over a foreign corporation such as Ceat, an Italian manufacturer, is constitutional. The record shows that Ceat, in addition to the private brand contracts with wholesalers in Massachusetts, New York and California, maintains sales of its tires in numerous other states. In any event Ceat, *by selling its tires to wholesalers without restrictions,* must have been aware that further distribution to retailers would take place. Thus, as described in *World-Wide Volkswagen,* Ceat "deliver[ed] its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state." Through the wholesaler of its tires, Ceat, at least indirectly, served the market for its product in Alabama and "it is not unreasonable to subject it to suit" in this state.

The Fifth Circuit, in *Oswalt v. Scripto, Inc.,* 616 F. 2d 191 5th Cir. 1980), relied upon the *World-Wide Volkswagen* holding and *dictum* when it upheld jurisdiction under the Texas long-arm statute over a Japanese manufacturer which sold lighters to a United States distributor, Scripto, Inc., with knowledge that Scripto sold the lighters to a nationwide market. Ceat claims that the case at bar is distinguishable from *Oswalt* because Ceat lacked knowledge that Duddy's is a nationwide concern. Ceat was aware, however, that Duddy's did "serve the market for its product in other states." Thus, according to the *World-Wide Volkswagen dictum* a finding of service by *Duddy's* to a *nationwide market* is not essential for the imposition of jurisdiction over *Ceat.*

This Court has sustained jurisdiction over foreign manufacturers in other products liability cases. In *Mann v. Frank Hrubetz & Co., Inc.*, Ala., 361 So. 2d 1021 (1978), we held that it does not violate due process to require the manu-

facturer to defend a products liability suit in that state (Alabama) where the accident occurs. Any hardship in defending the product in Alabama is an attribute of foreign trade. The facts of *Mann* and the cases discussed in that opinion, particularly *Sells v. International Harvester Co.*, 513 F. 2d 762 (5th Cir. 1975); *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 F. 2d 231 (9th Cir. 1969); and *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E. 2d 761 (1961), support the long-standing proposition that it is not "offensive to fair play or substantial justice or an undue burden on foreign trade to require a manufacturer to defend his product wherever he himself has placed it, either directly or through the normal distributive channels for trade." *Mann*, 261 So. 2d at 1024. See also *Schoel v. Sikes Corp.*, 533 F. 2d 930 (5th) Cir. 1976).

We hold, therefore, that the trial court erred in granting the motion of the defendant Ceat for summary judgment based upon lack of jurisdiction over the person, and we remand the cause to that court for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.

Maddox, Jones, Almon, Shores and Adams, JJ., concur.

Faulkner, J., with whom Torbert, C. J., and Embry, J., concur, dissents.

FAULKNER, JUSTICE (dissenting).

I dissent. The majority's opinion that Ceat is subject to in personam jurisdiction is incorrect for two reasons. First, the record contains no evidence whatsoever of Ceat's *present* contacts with the United States, this region, or this state. Second, the contacts of Ceat with this state via an independent contractor, Duddy's, over eight years ago are insufficient to justify exercising jurisdiction over Ceat.

A plaintiff's allegation of jurisdiction is generally sufficient to sustain the forum's power over a defendant. Nevertheless, once jurisdiction is challenged, the plaintiff bears the burden of establishing a nonresident defendant's contact with the state. *Rosemound Sand & Gravel Co. v. Lambert*

Sand & Gravel Co., 469 F. 2d 416 (5th Cir. 1972). Discovery techniques are available to explore the extent of a defendant's contacts with the forum state. *See Budde v. Ling-Temco-Vought, Inc.*, 511 F. 2d 1033 (10th Cir. 1975); *H. L. Moore Drug Exchange, Inc. v. Kline & French Laboratory*, 384 F. 2d 97 (2nd Cir. 1967); *Associated Metals & Minerals Corp. v. S. S. Geert Hawalt*, 348 F. 2d 457 (5th Cir. 1965). Plaintiff simply did not sufficiently explore Ceat's contacts with the forum. The only evidence cited by the majority of Ceat's present contacts is the testimony of John H. Porosky that he "believed" Duddy's to be a nationwide concern. Porosky is an employee of a subsidiary of Ceat and is not responsible for private brand contracts of Ceat. Porosky is not privy to the business records of Duddy's nor did he attempt to introduce any business records into evidence. There is no evidence of where tires are distributed in the United States, where retailers of Ceat tires are located, or whether any Ceat tires have been sold in Alabama in the past eight years. Ceat and Duddy's may be nationwide concerns, but this Court can only rely on the evidence presented in the record. We may not properly assume that a defendant has contacts with the state.

The Due Process Clause serves the primary function of protecting a defendant against the burden of litigating in an inconvenient forum. Although the permissible limits of due process have expanded in recent years, "it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts." *Hanson v. Denckla*, 357 U.S. 235, 251 (1958). The Due Process Clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

The majority fails to address the question of when jurisdictional contacts are measured. I believe the Due Process Clause of the Constitution is offended by holding that a defendant is subject to jurisdiction on the basis of its

contacts eight years prior to institution of a suit against it. The principal contacts relied on by the majority to justify the assertion of jurisdiction over Ceat are contacts occurring eight years ago. The majority notes that Ceat sold tires to Duddy's in 1974, who distributed to retailers in nine states. The only tires sold in Alabama by Duddy's were sold in 1972 and 1973. Clearly, Ceat could not foresee being liable to suit in Alabama eight years later, a period beyond the normal life of a tire. By foregoing the privilege of conducting activity in Alabama for eight years, Ceat should gain assurance that it would not be liable to suit in Alabama.

Ceat has no offices, employees or property in the United States. Plaintiff failed to prove that Ceat has any contacts with the forum. Due process requires that Ceat be protected from the burden of litigating in Alabama, a state which has no constitutionally cognizable contacts with Ceat.

I would therefore affirm the trial court's dismissal of the action against Ceat on the basis of a lack of in personam jurisdiction.

Torbert, C. J. and Embry, J., concur.

APPENDIX B

Certificate of Acknowledgment of Execution of an Instrument

REPUBLIC OF ITALY
PROVINCE OF TURIN
CONSULATE OF THE
UNITED STATES
OF AMERICA

I, Richard J. Shinnick, Vice Consul. of the United States of America at Turin, Italy, duly commissioned and qualified, do hereby certify that on this 26th day of June, 1979, before me personally appeared **** Angelo Tealdo **** to me personally known, and known to me to be the individual - described in, whose he subscribed to, and who executed the annexed instrument, and being informed of the contents of said instrument he duly acknowledged to me he executed the same freely and voluntarily for the uses and purposes therein.

In witness whereof I have hereunto set my hand and official seal the day and year last above written

Richard J. Shinnick
Vice Consul of the United States of America

TO WHOM IT MAY CONCERN

AFFIDAVIT

STATE OF ALABAMA, U.S.A.) S.S.

COUNTY OF MORGAN

The undersigned, Angelo Tealdo, declares that he is Managing Director and General Manager of CEAT S.p.A., Corso Palermo No. 1, Turin, Italy.

CEAT S.p.A., Turin, Italy (hereinafter referred to as CEAT) is an Italian Corporation which manufactures and markets tires and tubes for all automotive purposes.

CEAT has no establishment, Sales Organization nor any Sales Representatives, Agents in the State of Alabama. However CEAT maintains only a representative office, namely CEAT REPRESENTATIVE OFFICE, INC., 645 Madison Ave., New York, N.Y. 10022.

This office however is not qualified to do business in the State of Alabama and is not qualified to act as agent for service of process in the U.S.A. or Alabama.

CEAT has no manufacturing plant in the U.S.A., however against order received from Importers in the U.S.A., CEAT exports tires manufactured in Italy, but is not aware of the end users or their location, nor has CEAT any direct dealings with any Importer, Distributor, Agent, Dealer in the State of Alabama, nor has any knowledge of this being done by one or more of its U.S. importers or buyers.

CEAT has no contracts formed within the State of Alabama, or to be performed within the State of Alabama, has no agents in Alabama, no salesmen, deliveries or stocks of merchandise in Alabama, maintans no place of business and makes no sales in Alabama. In summary, CEAT S.p.A. has no contacts or activities whatsoever within the State of Alabama.

The undersigned declares under penalty of perjury that to his own knowledge the foregoing facts are true and correct and that, if called as a witness, he could competently testify thereto.

Executed this 26th day of June, 1979 at Turin, Italy.

Angelo Tealdo

APPENDIX C

DALTON BRYANT, PLAINTIFF

V.

RALPH C. SPEEGLE, et al,

IN THE CIRCUIT COURT OF MORGAN COUNTY, ALABAMA

DEFENDANTS CIVIL ACTION NO. CV 77-215P

This case is submitted on the motion of Ceat S.p.A. for summary judgment. The Court overruled this motion for summary judgment on August 9, 1979. On August 20, 1979, the Court set aside the order of August 9, 1979, and resubmitted the case for further consideration. On September 14, 1979, the Court again overruled the motion of this defendant. Subsequent to this date, the United States Supreme Court decided the case of Worldwide Volkswagen Corporation et al v. Woodson (Decided January 21, 1980) which speaks to the vital point at issue in this case. The motion was resubmitted for further consideration by the Court.

The question involved in this case is whether or not this Court has jurisdiction over an Italian corporation which manufactured a truck tire, in Italy, and sold it to a dealer in one of the other states of the United States. The uncontradicted affidavit of the Italian corporation is to the effect that their plant is in Italy, that they have never sold products in Alabama, that they are not qualified to do business in Alabama, they have no agent in Alabama, they maintain a representative office in New York City, they have no manufacturing plant in the United States, they have no contracts formed within Alabama, or to be performed in the State of Alabama, they made no deliveries

in Alabama, and maintain no stocks or merchandise in the State of Alabama. It appears that the tire was sold with other tires to a company in Massachusetts. It later wound up through the lines of commerce in the hands of a retailer in Alabama; the retailer sold it to a consumer who was using it at the time the plaintiff was injured. The manufacturer sells its tires in many countries of the world as well as in the United States. These are sold through importers or wholesalers.

As stated above, Worldwide Volkswagen et al Woodson, Supra, was brought to the attention of this Court after its rulings on the motion for summary judgment. This Court is of the opinion that this case is decisive of the issue presented. Prior to this case we had the rule that a defendant is subject to the jurisdiction of a court if there are minimum contacts with the state as set out in International Shoe Company v. Washington, 326 U.S. 310. This Court interpreted the state of the law as declared by the United States Court and our state Supreme Court as effectively removing all restrictions on personal jurisdiction of state courts when it was reasonably foreseeable that the defective product complained of might wind up within the jurisdiction of the state court. Worldwide Volkswagen et al v. Woodson puts to rest this very liberal view. "Foreseeability" that the product may wind up within the jurisdiction of a state court is only one of the items to be examined in determining jurisdiction, and this most recent case seems to make it one of the minor elements which fixes jurisdiction. This view is certainly a sounder interpretation of the Constitution than the view which is based on foreseeability alone.

The legal fraternity motivated by diligence is prone to over interpret decisions of the higher courts at times. Perhaps this is the interpretation placed in International Shoe Company v. Washington, Supra, but it seems that Worldwide Volkswagen v. Woodson clarifies this issue. In the opinion of this Court, we have only the test of foreseeability on which to base personal jurisdiction of this defendant.

This Court, therefore, corrects its former holding and IT IS HEREBY ORDERED that the motion for summary judgment of this defendant, Ceat S.p.A. be granted, and this defendant is dismissed as a defendant in this case.

This the 4th day of December, 1980.

Newton B. Powell
CIRCUIT JUDGE

APPENDIX D

Rule 4.2

PROCESS: BASIS FOR AND METHODS OF OUT-OF-STATE SERVICE

(a) Basis for Out-Of-State Service.

(1) When Proper. Appropriate basis exists for service of process outside of this state upon a person in any action in this state when

(A) the person is, at the time of the service of process, either a nonresident of this state or a resident of this state who is absent from the state, and

(B) the person has sufficient contacts with this state, as set forth in subdivision (a) (2) of this rule, so that the prosecution of the action against the person in this state is not inconsistent with the constitution of this state or the Constitution of the United States, or, the person is sued in his capacity as executor, administrator, or other personal representative of an estate for the acts or omissions of his decedent or ward, and the person so sued does not otherwise have sufficient contacts with this state in his capacity as personal representative, but the person's decedent or ward would have been deemed to have sufficient contacts with this state if the action could have been maintained against him.

(2) Sufficient Contacts. A person has sufficient contacts with the state when that person, acting directly or by agent, is or may be legally responsible as a consequence of that person's

(A) transacting any business in this state;

(B) contracting to supply services or goods in this state;

(C) causing tortious injury or damage by an act or omission in this state including but not limited to actions arising out of the ownership, operation or use of a motor vehicle, aircraft, boat or watercraft in this state;

(D) causing tortious injury or damage in this state by an act or omission outside this state if the person regularly does or solicits business, or engages in any other per-

sistent course of conduct or derives substantial revenue from goods used or consumed or services rendered in this state;

(E) causing injury or damage in this state to any person by breach of warranty expressly or impliedly made in the sale of goods outside this state when the person might reasonably have expected such other person to use, consume, or be affected by the goods in this state, provided that the person also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(F) having an interest in, using, or possessing real property in this state;

(G) contracting to insure any person, property, or risk located within this state at the time of contracting;

(H) living in the marital relationship within this state notwithstanding subsequent departure from this state, as to all obligations arising from alimony, custody, child support, or property settlement, if the other party to the marital relationship continues to reside in this state; or

(I) otherwise having some minimum contacts with this state and, under the circumstances, it is fair and reasonable to require the person to come to this state to defend an action. The minimum contacts referred to in this subdivison (I) shall be deemed sufficient, notwithstanding a failure to satisfy the requirement of subdivisions (A) - (H) of this subsection (2), so long as the prosecution of the action against a person in this state is not inconsistent with the constitution of this state or the Constitution of the United States.

(3) "Person" Defined. This term "person" as used herein includes an individual, his executor, administrator, or other personal representative, or a corporation, partnership, association or any other legal or commercial entity.

(b) Methods of Out-of-State Service. All service of process outside this state shall be made as set forth below except when service by publication is available pursuant to Rule 4.3. Service outside of this state under this rule

shall include service by certified mail and delivery by a process server; and each method shall be deemed to confer in personam jurisdiction. Unless otherwise requested or permitted by these rules, service of process outside this state shall be made by certified mail.

(1) Certified Mail.

(A) How served. The Clerk shall place a copy of the process and complaint or other document to be served in an envelope and shall address the envelope to the person to be served at his last known address with instructions to forward. He shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered. When the person to be served is a natural person, the clerk shall also request restricted delivery, unless otherwise ordered by the court. The clerk shall forthwith enter the fact of mailing on the docket sheet of the action and make a similar entry when the return receipt is received by him.

(B) When Effective. Service by certified mail shall be deemed complete and the time for answering shall run from the date of delivery of process as evidenced by the return receipt.

(C) Failure of Delivery. If the return receipt shows failure of delivery, the clerk shall forthwith notify, by mail, the attorney of record, or if there is no attorney of record, the party at whose instance process was issued. In the event that the return receipt shows failure of delivery, service is complete when the serving party or his attorney, after notification by the clerk, files with the clerk an affidavit setting forth facts indicating the reasonable diligence utilized to ascertain the whereabouts of the party to be served, and service by publication is made under Rule 4.3 (c).

(2) Delivery By a Process Server.

(a) When Proper. When the plaintiff files a written request with the clerk for service by delivery by a process

server, service of the process and accompanying documents may be delivered to a "person" as set forth in subparagraph (a) of this rule by a person designated by order of the court to make service of process.

(B) How Served and Returned. Service herein may be made by any person not less than eighteen years of age who is not a party and who has been designated by order of the court. On request, the clerk shall deliver the summons to the plaintiff or his attorney for transmission to the person who will make the service. Proof of service may be made as prescribed by Rule 4.1 (b) (3) or by order of the court.

(dc) District Court Rule. Rule 4.2 applies in the district courts. Adopted eff. January 16, 1977.

Opposition

Supreme Court, U.S.
FILED
APR 5 1982
ALEXANDER L. STEVAS
CLERK

No. 81-1379

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

CEAT S.p.A., Pneumatici
Petitioner,

v.

DALTON BRYANT
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE ALABAMA SUPREME COURT

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STATEMENT OF THE CASE

Dalton Bryant, appellant in the case before the Supreme Court of Alabama, is a welder in Decatur, Alabama. On July 12, 1976, one of the defendants, Ralph Speegle, drove his tractor-trailer to Bryant's welding shop to have a guide bar welded to the front portion of his aluminum trailer. Bryant was stooped beneath the trailer measuring the area to be welded when he laid a clipboard on top of one of the trailer tires. The tire exploded and blew Bryant many feet in the air injuring him severely. The tire which exploded was a Ceat 10.00 R.20, 16 PR B 90 Plutone tire which had been manufactured by Ceat S.p.A. Pneumatici, an

Italian corporation (hereinafter "Ceat"). It was manufactured in Seltino Torenese, Italy in the fourteenth week of 1974. The tire bore the brand name "Torino" which identifies it as a tire manufactured by Ceat exclusively for an American tire distributor known as Duddy's, Inc.

The tire had been purchased by defendant Speegle at Priceville Tire Company in Priceville, Alabama. It had been recapped by an unknown Alabama firm some time before it exploded and injured Bryant. Plaintiff's expert witness has testified that the tire had been both negligently manufactured and recapped and these procedures combined and concurred to cause the tire to explode.

Ceat's representative testified by deposition that he is one of four employees of Ceat Representative Office, Incorporated which is an Ohio corporation wholly owned by the Italian manufacturer. That company's responsibility is to distribute Ceat tires in the United States through wholesalers. Ceat sells only to wholesalers in the United States and does not have any distributors per se. Orders for tires are solicited and accepted by Ceat for tires to be shipped to whatever port of entry in the United States the client designates.

Ceat is a very large tire manufacturer with three manufacturing plants in Italy and one in Bombay, India. It has been engaged in the manufacture of tires for thirty years and boasts sales in excess of three hundred million tires. It manufactures three specific brands for exclusive sale to American tire companies: "Avanti" for Tire Associates in New Jersey; "Bryant-Winston" for Oliver and Winston in California; and "Torino" for Duddy's, Inc. of Massachusetts. The tire made the subject of this suit was one of the "Torino" tires manufactured for Duddy's Inc. which Ceat recognizes as a "nationwide concern" with tire sales of around twenty million dollars per year. Of course, not all

of Duddy's tires come from Ceat and Ceat also sells its own "Ceat" tires in the United States through other wholesalers than the three set forth above.

The evidence adduced at the trial level showed the following annual sales totals for Ceat tires in the United States:

1970	—	18,236
1971	—	158,144
1972	—	222,243
1973	—	218,502
1974	—	46,612
1975	—	82,215
1976	—	187,095
1977	—	152,674
1978	—	198,145
1979	—	142,294
Subtotal		1,426,160

Ceat has consistently maintained that it sells only to wholesalers and not to consumers in the United States. Its corporate representative also testified that he could not state that he would not expect Ceat tires to be sold or used in Alabama. Indeed, Ceat's sales records show that in 1972 it sold 4,300 tires to David Tire Company in Birmingham, Alabama. In 1973 it sold 9,284 tires to that same company. No further *specific* sales are shown on its computerized invoices for Alabama.

Bryant filed suit against Ceat and others in the Circuit Court for Morgan County, Alabama. Ceat S.p.A. filed a motion for summary judgment asserting that the Alabama court lacked personal jurisdiction over the Italian corporation in that it did not have sufficient minimum contacts with the State of Alabama to make it amenable to suit. The

trial court granted the motion and dismissed defendant Ceat from the suit on December 4, 1980. The trial court then expressly determined under Rule 54(b) Alabama Rules of Civil Procedure that despite the presence of other defendants, there was no just reason for delay in granting judgment for defendant Ceat. A final judgment was entered for that defendant on December 15, 1980. Plaintiff/Bryant filed a timely notice of appeal to the Supreme Court of Alabama on January 5, 1981. The case was submitted to the entire Court and in a 6 to 3 opinion, the Supreme Court of Alabama reversed the ruling of the trial court and held that sufficient minimum contacts did exist between the State of Alabama and Ceat to support the exercise of jurisdiction over that defendant. That opinion was delivered on October 2, 1981, and has been published as *Bryant v. Ceat S.p.A.*, 406 So.2d 376 (Ala., 1981). Ceat petitioned that Court for a rehearing which was denied without opinion. Ceat now seeks a writ of certiorari for a review of the opinion rendered by the Supreme Court of Alabama.

REASONS FOR DENYING THE WRIT

1. The opinion of the Alabama Supreme Court comports with this court's traditional and recent analyses of the due process requirements necessary to support in personam jurisdiction in the instant case.

Ceat contends that it maintains no contacts with the State of Alabama which would support its being sued for the failure of one of its tires in that state. The assertion is made (as it was similarly presented to the Alabama Supreme Court) that Ceat sells only to wholesalers and that while tires are manufactured for exclusive distribution by "nationwide concerns" such as Duddy's Inc., Ceat does not sell such tires in Alabama or any other state.

Ceat was served with process in this cause under the provisions of Rule 4.2 Alabama Rules of Civil Procedure (set out in its entirety in Appendix D to the Petition). The suit was brought against Ceat pursuant to theories and expert testimony as to the negligent manufacture and breach of warranty presented by the defective tire which exploded and injured the plaintiff. The Alabama long-arm statute for service pursuant to Rule 4.2 A.R.C.P. has been found to extend to the permissible limits of due process. *Mann v. Frank Hrubetz and Co., Inc.*, 361 So. 2d 1021, 1023 (Ala. 1978); *Sells v. International Harvester Co.*, 513 F. 2d 762 (5th Cir., 1975) (construing Alabama law). Moreover, the Advisory Committee which drafted Rule 4.2 A.R.C.P. noted in its comments that subparagraph (I) was included to insure that Alabama had a basis of jurisdiction which would be "coextensive with the scope of the federal due process clause." Vol. 23, Code of Alabama (1975), Rule 4.2 overview at p. 32. (See also, *SEMO Aviation, Inc. v. Southeastern Airways*, 360 So. 2d 936, 938-9 (Ala., 1978).

There are several pertinent facts which are undisputed in this case:

1. Ceat is a worldwide manufacturer of passenger vehicles and truck tires.

2. Ceat manufactures tires under three different brand names for the exclusive use of tire companies in the United States.

3. Ceat sells its own brand name tires to wholesalers in the United States.

4. Ceat has sold at least 1,426,160 tires in the United States in the past ten years.

5. Ceat manufactured the tire made the basis of this suit under the brand name "Torino" for exclusive sale to Duddy's Inc. of the United States.

6. Ceat acknowledges that Duddy's was a large "nationwide concern" with annual sales of over twenty million dollars.

7. The tire made the basis of this suit was purchased in Alabama.

8. The tire exploded in Alabama.

9. The tire injured an Alabama resident.

Ceat appears to take refuge in the argument that there is no evidence which shows it participated in getting its product into Alabama. This is not a chain which must be proven to establish in personam jurisdiction. The petitioner's brief states that the only contacts by Ceat with the State of Alabama consist of invoices for tires shipped into the state in 1972 and 1973 (petitioner's brief at p. 4). These may have been the last recorded contacts, but they continued to pursue a course of nationwide distribution which created a sphere of activity which encompassed Alabama as much as the other states.

In the case of *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945), this Court held that due process requires only that in order to subject the defendant to *in personam* jurisdiction, he must have certain minimum contacts with the forum state so that the maintenance of the suit "does not offend the traditional notions of fair play and substantial justice." 326 U.S. at 316. The Court realized that its newly announced "minimum contacts" test was not one of mathematical or recorded invoice precision. Instead, these guidelines were set forth so that each case could be examined under its own factual light:

> "It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative.

> The test is not merely, as has sometimes been suggested, whether the activity, which the corporation has seen fit to procure through its agents in another state, is a little more, or a little less. (cite omitted) Whether due process is satisfied must depend rather upon the *quality* and *nature* of the activity in *relation* to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." 326 U.S. at 319 (emphasis added)

In the case at bar, the *quality* of the activity of Ceat is that of manufacturing tires which it sells to large nationwide wholesalers for ultimate consumption and use in all the fifty states. The *nature* of this pervasive and voluminous activity is shown by the recorded sales of 1,426,160 Ceat tires in the United States from 1970 through 1979.[1] Yet Ceat contends that despite its large volume of sales in this country it is insulated from the jurisdiction of any state since it sells only to wholesalers at various ports of entry and has no agents in any of the states. The *relationship* of Ceat's purposeful activity on a nationwide scale and the goal of a fair and orderly administration of justice in accordance with the due process clause demands the assertion of jurisdiction by Alabama courts. Ceat has no agents in this country. It dumps its tires on wholesalers with a clear design that the tires be sold on a nationwide basis. It has no more contacts with any other state than it has with Alabama. Indeed, its contacts with Alabama are much stronger since the tire was purchased there, exploded there and injured an Alabama resident. If there is no jurisdiction in Alabama, there is certainly none in any other forum! Dalton Bryant can either sue Ceat in Alabama or not at all. Thus a ruling that Ceat was not amenable to the

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[1]Ceat's representative testified in his deposition that Ceat anticipated a 1% *"minimum* defect rate" on their tires. Thus Ceat fully expected at least 14,261 defective tires in the United States for that ten-year period.

jurisdiction of the Alabama court would deprive Dalton Bryant of due process since he would be effectively prevented from ever pursuing the tort feasor which had purposefully availed itself of a nationwide market, engaged the revenues from the sales of one and one-half million tires but successfully insulated itself from ever facing up to the responsibility of its planned and expected defective products. Such a concept does not resemble any civilized notion of "fair play and substantial justice."

In the case of *World-wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), this Court was confronted with an attempt to establish in personam jurisdiction over the distributor of a car which fortuitously found its way from New York to Oklahoma by the unilateral act of the plaintiff having driven it to that state. This Honorable Court refused to find sufficient "minimum contacts" under those facts to subject the sellers to jurisdiction in Oklahoma. That case did not involve a manufacture which was engaged in a sales plan which included the entire United States through sales to wholesalers. Indeed the Court highlighted that distinction in the following language:

> ". . . Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there. (cite)
>
> "Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the *efforts of the manufacturer* or distributor to serve, *directly or indirectly*, the market for its product in other states, *it is not unreasonable to subject it to suit* in one of those states if its allegedly defective merchandise has there been the source of injury to its owner or others. *The forum State does not exceed its powers under the Due Process Clause if it asserts per-*

> *sonal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.*" 100 S.Ct. at 567. (citing *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E. 2d 761 (1961) (emphasis added).

Since the announcement of the *World-Wide Volkswagen* case, several courts have been confronted with instances of behavior such as that described in the case at bar. In the case of *Oswalt v. Scripto, Inc.*, 616 F. 2d 191 (5th Cir., 1980), the court was confronted with the reach of the Texas long-arm statute over a Japanese manufacturer which sold lighters to an exclusive American distributor, Scripto, Inc. The sales were consummated in Japan. The plaintiff was injured in Texas when one of the lighters malfunctioned and burned her. The manufacturer had never done any business with any other American entity but knew of Scripto's "national retail markets," 616 F.2d at 197. The Fifth Circuit held that sufficient minimum contacts were supplied by a foreign manufacturer which utilizes a distribution market with the expectation that its products will be purchased by consumers in the forum state. The court further noted that its conclusion was based upon the *Gray v. American Radiator case* (supra) and that *Gray* had been cited favorably by this Court in *World-Wide Volkswagen*.

The Alaska Supreme Court came to a similar conclusion in *Volkswagenwerk A.G. v. Klippan*, 611 P.2d 498 (Alaska, 1980), when it found sufficient contacts for jurisdiction over the German manufacturer of seat belts to be used in the United States.

The Supreme Court of Colorado found jurisdiction over the French tire manufacturer Michelin in the case of *Le Manufacture Francaise Des Pneumatiques Michelin v. District Court*, 620 P.2d 1040 (Colo., 1980). Michelin sold its

tires in a manner similar to that used by Ceat in this case. The court found that it had purposefully availed itself of a national market, including the forum state, and that it was not unreasonable to require it to defend a suit in that state.

The Appeals Court of Tennessee found jurisdiction over a French manufacturer of a crane which caused a personal injury in that state. In *McCombs v. Cerco Rentals,* 622 S.W.2d 822 (Tenn., 1981), the court held that it was neither unreasonable nor unjust to hold a defendant answerable when it has voluntarily placed a product in the stream of "national commerce" for ultimate use in another state and "these channels have carried the product to Tennessee where it caused damages." 622 S.W.2d at 825.

The Circuit Court of Appeals for the District of Columbia has reached a similar conclusion in the case of *Stabilisierungsfonds Fur Wein v. Kaiser,* 647 F.2d 200 (D.C. Cir., 1981). That case involved foreign corporations which had no agents in the United States but sold exclusively to two distributors. The court noted that the manufacturers "had never attempted to curtail" the distributors' sale of the wine in this country and had "chosen a course of conduct that renders sales of their wine here not merely foreseeable, but affirmatively welcomed." 647 F.2d at 205.

The logic and fairness of each of these decisions are based upon this Court's opinion in *World-Wide Volkswagen* as well as the "traditional notions of fair play and substantial justice." It would be offensive to our system of justice to allow a foreign manufacturer to methodically elect to dump large numbers of its product on our country and to enjoy the financial benefits of those sales without the commensurate legal responsibilities to stand behind that product when it is alleged to be defective and injures

a not only foreseeable but planned consumer. Ceat has clearly elected to place its tires in the "national stream of commerce" in the United States. It has systematically conducted its commercial activity on a national basis. As a natural and foreseeable consequence of this large scale activity, the tire in question found its way to Alabama and exploded there while injuring an Alabama resident. The plaintiff had nothing to do with the tire making its way to Alabama. The national stream of commerce took care of that. Ceat not only knows its tires will be used in every state, it also recognizes that at least 1% of them will be defective. Thus it has a clear and well evaluated "reasonable expectation that it can be haled into the courts of this forum" and others.

This Court is mindful of the pervasive presence of foreign cars, automotive parts and other products in our country today. To insulate those foreign manufacturers from suit on their defective products would not only be unjust but it would expose millions of American consumers to dangerous products which could be dumped in this country with impunity. An Ohio appellate court recognized the injustice of that situation and stated:

> "It is unfair that a defendant be able to insulate itself against personal jurisdiction in a state where an injury is caused by its product and where the goods were actually sold and used by selling its goods to a middleman distributor and washing its hands of any knowledge of where the goods are actually sold and used. For this reason, the 'stream of commerce' theory has evolved for holding a foreign manufacturer subject to personal jurisdiction in the State where a sale is made and a claim occurs, if that defendant places a substantial amount of goods into the flow of commerce in the United States so that it can reasonably be anticipated that part of the goods will be sold in the forum

state (cite). The due process clause test of fair play and substantial justice is satisfied where the defendant, a large company, derives substantial sales revenue from the United States main place even though its sales are made outside the State of Ohio for distribution wherever the immediate purchaser of its products deems best." *Ross v. Speigel, Inc.*, 373 N.E.2d 1288, 1299 (Ohio App., 1977).

CONCLUSION

For this Court to ignore Ceat's purposeful and systematic use of a national market and to hold that Alabama did not have sufficient minimum contacts to assert jurisdiction would be to eliminate Dalton Bryant's ability to sue Ceat in *any forum*. On a much larger scale, such an action would not be unlike the scene of Pontius Pilate washing his hands and thereby opening the doors for an unwarranted but legally endorsed slaughter. Moreover, the unfairness of the situation extends beyond that of the foreseeable injured consumers of such defective but skilfully marketed foreign goods. It is also unfair in its effect upon American manufacturers who must continue to stand behind their products to their competitive detriment.

The realities of product distribution in today's world and the factual contacts and commercial schemes presented by Ceat's marketing technique demand that Alabama be held to have personal jurisdiction over Ceat in this case. Therefore, respondent respectfully prays that this Court refuse to issue the requested writ of certiorari and allow the opinion of the Alabama Supreme Court to stand.

Respectfully submitted,

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